

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUTH ANN IRELAND,	§
	§ No. 56, 2011
Plaintiff Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
GEMCRAFT HOMES, INC.,	§ in and for Kent County
	§ C.A. No. 04C-11-033
Defendant Below-	§
Appellee.	§

Submitted: July 29, 2011
Decided: October 3, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 3rd day of October 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The plaintiff, Ruth Ann Ireland, filed this appeal following a jury verdict in favor of the defendant, Gemcraft Homes. Ireland argues that the Superior Court's failure to adequately instruct the jury constitutes reversible error. Ireland also argues that the Superior Court erred in finding her negligent as a matter of law. We find no merit to either claim. Accordingly, we affirm the judgment below.

(2) The record reflects that Ireland filed an amended complaint against Gemcraft in July 2006 alleging, among other things, that she had sustained

personal injuries at a home she was having built when she slipped on plastic and fell in a porch area that was under construction. After deposing Ireland, Gemcraft filed a motion for summary judgment contending that Ireland had assumed the risk for her injuries when she walked into the porch area, which she knew was under construction, without turning on the porch light and without looking where she was stepping. Gemcraft argued that Ireland was more than 50% responsible for her injuries and, thus, she was not entitled to recover any damages as a matter of law. The Superior Court ruled that Ireland was negligent as a matter of law and that her negligence was a proximate cause of the accident but allowed the matter to go before the jury to determine the percentage of Ireland's negligence. The jury returned a verdict finding that Gemcraft was negligent but that Gemcraft's negligence was not a proximate cause of Ireland's injuries. Ireland appeals that judgment.

(3) Ireland enumerates four issues in her opening brief on appeal, The arguments are intertwined, however, and present only two cognizable issues for the Court's consideration: (i) Did the Superior Court fail to properly instruct the jury on the issues of proximate cause and comparative negligence thus confusing the jury and causing the jury to fail to complete the verdict form; and (ii) Did the Superior Court err in finding Ireland negligent as a matter of law based on her

deposition testimony, which Ireland claims she had corrected in her errata sheets.

We address this second issue first.

(4) We review *de novo* the Superior Court’s grant of summary judgment.¹

In its motion for summary judgment, Gemcraft pointed out that that Ireland, in her deposition testimony, had stated under oath that she stepped onto the porch, which she knew was under construction, without turning on the porch light and without looking where she was stepping. Gemcraft argued that, under the “step in the dark” rule,² Ireland was negligent as a matter of law for not looking first before she stepped into an unlit and unfamiliar area.

(5) In support of its motion, Gemcraft cited the following testimony from Ireland’s deposition transcript:

Q: So, you’re in the house now. You have a plant. You don’t know whether or not the work had been finished including the railing. It’s nighttime. You are opening the door and what happens?

A: I opened the door and I attempted to step down.

Q: Did you look where you were going?

A: No.

Q: What happens next?

¹ *Merrill v. Crothall-American*, 606 A.2d 96, 99 (Del. 1992).

² *See Maher v. Voss*, 98 A.2d 499, 503 (Del. 1953) (noting that people entering an unfamiliar situation where darkness obscures their vision should not proceed without first determining whether obstructions impede their way).

A: Because I'm just stepping down, what, eight inches or whatever that little step is.

Q: So, you didn't look at the step. You just stepped?

A: Just stepped.

Q: What happened next?

A: When I stepped, I slipped on this plastic. And underneath the plastic were these wooden rails. I didn't know what it was at the time. All I know, my right foot crunched under the debris that was on the porch. And when I started to fall forward, I reached for the rails.

...

Q: Was there an exterior porch light on that porch at that time?

A: No.

Q: Is there one now?

A: You mean is there a porch light on that porch?
Yes.

Q: Was there one then?

A: Yes.

Q: Did you turn that porch light on before you stepped out there?

A: No. The light in the kitchen area was more than enough.

Q: You never saw the plastic or the railings under plastic before you stepped onto the porch. Right?

A: No.

Q: Because you didn't look?

A: No.

(6) On August 3, 2007, Ireland submitted an errata sheet, which changed her answer (highlighted in bold in the quoted passage above) from “no” to “yes” in response to the question, “Did you look where you were going?” Ireland indicated in her errata sheet that she misspoke when she initially answered “no” to the question. Ireland suggests in her opening brief that this single correction to her deposition testimony should have precluded the Superior Court’s ruling that she was negligent as a matter of law.

(7) We disagree with Ireland’s assertion.³ In reading Ireland’s deposition testimony as a whole, even with her corrected answer, her sworn testimony established that she stepped onto the porch without first looking where she was stepping. In the follow-up question by counsel, “So you didn’t look at the step, you just stepped?” Ireland responded, “Just stepped.” Under the circumstances, we find no error in the Superior Court’s ruling that Ireland was negligent as a matter of law for walking into an area under construction without first looking before she stepped.⁴ Consequently, we find no error in the Superior Court’s jury

³ We do not address Gemcraft’s contention that Ireland’s errata sheet constitutes a “sham affidavit” that was submitted in an attempt to defeat Gemcraft’s motion for summary judgment. Ireland’s errata sheet is dated August 3, 2007. Gemcraft did not file its motion for summary judgment until August 24, 2007. Accordingly, we find no support in the record presented for Gemcraft’s assertion that the errata sheet was submitted in response to the motion for summary judgment.

⁴ See *Maier v. Voss*, 98 A.2d at 503.

verdict form, which informed the jury that, by prior court order, Ireland had been found negligent and that her negligence was a proximate cause of the accident.

(8) Ireland's remaining issue on appeal challenges the Superior Court's instructions to the jury. Ireland contends that the Superior Court erred by failing to specifically instruct the jury that there may be more than one proximate cause of an accident. Ireland asserts that this omission, taken together with the Superior Court's pre-marked jury verdict form, confused the jury and caused them to fail in their duty to assign a percentage of negligence to each party.

(9) With respect to the issues of comparative negligence and proximate cause, the Superior Court instructed the jury as follows:

Gemcraft alleges that Plaintiff, Ruth Ann Ireland's, negligence proximately committed the accident—proximately caused the accident. Negligence is negligence no matter who commits it. When the plaintiff is negligent, we call it comparative negligence. Under Delaware law, a plaintiff's comparative negligence doesn't mean that the plaintiff cannot recover damages from the defendant, as long as the plaintiff's negligence was no greater than the defendant's negligence. Instead of preventing a recovery, Delaware law reduces the plaintiff's recovery in proportion to the plaintiff's negligence.

The Court has previously ruled that Ruth Ann Ireland was negligent as a matter of law and that her negligence was a proximate cause of the accident. You must determine the degree of that negligence, expressed as a percentage, attributable to Ruth Ann Ireland. Using 100 percent as the total combined negligence of the parties, you must determine what percentage of negligence is attributable to Ruth Ann Ireland. I'll furnish you with a special verdict form, which looks like this, for the purpose of that decision.

If you find that Ruth Ann Ireland's negligence is no more than half the total negligence, I will reduce the total amount of Ruth Ann Ireland's damages by

the percentage of her comparative negligence. It says contributory here because that is what we used to call it. It's [sic] now everything should be comparative negligence. If you find that Ruth Ann Ireland's negligence is more than half the total negligence, Ruth Ann Ireland may not recover damages.

...

A party's negligence by itself is not enough to impose legal responsibility on that party. Something more is needed. The party's negligence must be shown by a preponderance of the evidence to be a proximate cause of the accident.

Proximate cause is a cause that directly produces the harm and but for which the harm would not have occurred. A proximate cause brings about or helps to bring about the accident and it must have been necessary to the result.

(10) In evaluating the propriety of a jury charge, the jury instructions must be viewed as a whole.⁵ Where, as in this case, a party fails to object to a specific instruction,⁶ this Court must “determine whether the instructions and the special interrogatories given to the jury were erroneous as a matter of law, and, if so, whether those errors so affected the [appellant's] rights that the failure to object at trial is excused.”⁷ Even if there are some inaccuracies in the jury instructions, “this Court will reverse only if such deficiency undermined the ability of the jury ‘to

⁵ *Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991).

⁶ Ireland's contention that she objected to the jury instructions at issue is not supported by the record. While Ireland raised some questions to the trial judge during the pretrial conference about the jury verdict form, she specifically informed the court that she did not take any exception to the jury charge.

⁷ *Culver v. Bennett*, 588 A.2d at 1096.

intelligently perform its duty in returning a verdict.’’⁸ Reading the jury instructions in this case as a whole, we find no error of law. The proximate cause instruction accurately informed the jury of the but-for standard of causation. Read together with the comparative negligence instruction, the jury clearly was authorized to apportion liability among both parties if the jury found that both parties’ negligence proximately caused injuries to Ireland. The jury, however, concluded that Gemcraft’s negligence was *not* a proximate cause of Ireland’s injuries. Thus, the jury, correctly, did not apportion liability between the parties. We find no basis upon which to conclude that the jury was misled in rendering its verdict.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ *Probst v. State*, 547 A.2d 114, 119 (Del. 1988) (quoting *Storey v. Castner*, 314 A.2d 187, 194 (Del. 1973)).